IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2854 OF 2004

Shri Asoke Basak & Anr. ...Applicants/Petitioners
Vs.
The State of Maharashtra & Ors. ...Respondents

WITH

CRIMINAL APPLICATION NO.2855 OF 2004

Shri P.K. Kukde and others ...Applicants/Petitioners
Vs.
The State of Maharashtra & Ors. ...Respondents

WITH

CRIMINAL APPLICATION NO.3715 OF 2005

M.S.E.B. & Ors. ...Applicants/Petitioners
Vs.
Datar Switchgear Ltd. & Ors. ...Respondents

Mr. Amit Desai with Mr. Sanjeev P. Kadam with Ms. Deepa Chavan i/b. M/s. Little & Co. for Petitioners in Criminal Appln. No.3715 of 2005, Cri. Apln. No.2854/2004 & Cr. Apln. No.2855/2004.

Dr. F.R. Shaikh, Addl. P.P for Respondent No.1 State
Mr. Adhik Shirodkar with Mr. Mukul Taly with Mr. Vaibhav Joglekar with Ms. Swati Deshpande i/b. Mohammedbhai & Co. for Respondent Nos.2 to 4 in Cr.Apln.No.2854/2004 and Cr. Apln.No.2855 /2004.

Dr. F.R. Shaikh Addl. P.P for Respondent No.1 State
Mr. Shirish Gupte with Mr. V. Joglekar with Mr. Mukul Taly with Ms.Swati Deshpande i/b. Shaunak Satpute for Respondent Nos.2 to 4 in Cr.Apln.3715.05

CORAM: DR. S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.

Date of Reserving the Judgment:18TH SEPTEMBER, 2007.
Date of Pronouncing the Judgment: 9TH OCTOBER, 2007

JUDGMENT (Per Smt. Roshan Dalvi, J.)

1. The first 2 Petitions/Applications are for quashing of the Criminal Complaint No.SCC No.1881 of 2004 filed in the Court of learned Judicial Magistrate,First Class at Shivajinagar, Pune. The 3rd Petition is for quashing the order of issuance of process in R.C.C./S.C.C. No.476 of 2004 in the Court of the learned Magistrate, First Class at Nashik.

2. The Petitioners/Applicants are Officers of M.S.E.B who are the accused in the aforesaid complaints.

3. There were various contracts entered into between the M.S.E.B and the Complainant's Company Datar Switchgear Ltd. There were several tenders to be invited from time to time under those contracts. In March, 2001 a sum of Rs.5,00,000/- came to be deposited by Datar Switchgear Ltd., with M.S.E.B as security deposit in lieu of the bank guarantee that was required to be given for the tenders which were to be filed for the contract between the parties. Certain disputes arose by and between the parties. Due to

certain alleged malpractices on the part of the M.S.E.B the contracts came to be terminated. Upon the termination of the contracts the Complainants desired to be refunded the security deposit which was kept with M.S.E.B.

4. It is their contention that the security deposit, as the term suggests, was the deposit to secure the performance of the contracts which were given to the Datar Switchgear Ltd., under certain tenders. After the contracts are terminated and no other contracts are to be entered into, the security deposited, by its very essence, becomes refundable and must be refunded.

5. The Complainants by their letter dated 16th September, 2003 informed the M.S.E.B that they have no desire to participate in further tenders to be floated by M.S.E.B and called upon the Petitioners to refund Rs.5,00,000/- kept as security deposit with M.S.E.B. The Petitioners on behalf of the M.S.E.B replied to the said letter vide their letter dated 6th March, 2004 claiming adjustment of the said amount towards other dues allegedly payable by Datar Switchgear Ltd., to the M.S.E.B.

6. It can be seen primafacie that adjustment towards any

other liability, is not entitled to be claimed. The Complainants have therefore, alleged wrongful misappropriation of the said funds by the Petitioners/Applicants. They alleged a wrongful loss to have been caused to them and wrongful gain to have been caused to the M.S.E.B by virtue of the adjustment and the refusal to refund the security deposit.

7. Consequently the complainants through their letter dated 22nd March, 2004 alleged that the action of the Petitioners/Applicants has resulted in depriving the Complainants of their rightful dues. They, therefore, alleged criminal breach of trust by the Petitioners/Applicants acting as public servants being the Officers of M.S.E.B.

8. In the said letter the Complainants have shown the collective role of all the accused.

9. The defence of the Petitioners/Applicants to the aforesaid charge is that of valid appropriation/adjustment of the amount paid by the Complainants under their contractual liability.

10. A reading of the complaint primafacie shows a

cognizable case. The defence of the Applicants would be required to be seen on merits at the time of trial. We may mention that the Petitioners would be able to show lack of mens rea only by repayment along with full interest and costs. It may also be mentioned that the factum of non-payment of the said amount is an admitted fact and would not be required to be proved. Whether or not it amounts to be a breach of trust in the aforesaid complaint is alone to be adjudicated.

11. It was contended on behalf of the Petitioners/Applicants that this amount has been considered and could be considered in the civil remedies which have been already enforced by the Complainants in certain Arbitration Proceedings. In the case of **Indian Oil Corporation Vs. NEPC India Ltd. A.I.R. 2006 S.C.2780**, it has been held by the Apex Court that the availability of civil remedy does not mean that criminal law remedy is barred, even if a defence is seen, though it may ultimately lead to acquittal of the accused, and that this alone would not grounds for qashing of the complaint at the threshold. That was also a case of cheating by default in payments in which the offence of criminal breach of trust under Section 405 of the Indian

Penal Code (I.P.C.) was to be considered.

12. It is also contended that the specific case has not been made out against each of the Petitioners. In the case of **Tarun K. Shah Vs. C.R. Alimchandani, (2001) 9 SCC 728**, it has been held that it was not incumbent upon the Complainant to plead the role of each of the accused in the complaint. The factum of forgery alleged against the accused would constitute an offence which will be cognizable and which will not call for quashing of the complaint.

13. Similarly in the case of **Suresh Vs. State of U.P., (2001) 3 SCC 673** it has been held that the charge under Section 34 of the I.P.C recognises the principle of vicarious liability in criminal jurisprudence, so that if two or more than two persons intentionally do a thing jointly, it is just the same as if each of them having done it individually, since common intention presupposes prior concert.

14. The Complainants in the third case have filed their private complaint pursuant to an Award dated 18th June, 2004 in Arbitration Petition filed by and between the parties with regard to the contractual disputes. It is their contention that the written statement filed by the Respondents in the

Arbitral Proceedings/accused in the Complaint/Petitioners herein show that the Petitioners falsely contended that complainant No.1 submitted false and fabricated commissioning reports and installed certain equipments, which were to be installed by them under their contract with the M.S.E.B, without the presence of the M.S.E.B' sSection-in-charge. The commissioning reports were relied upon by the Petitioners herein as Exhibit-C-64 in the Arbitration Proceedings and tendered in evidence through their witnesses.

15. They contend that these reports are false and fabricated and made to show that the Complainants had knowledge of those reports. However, they were brought on record by each of the accused acting with common intention and prior concert. They have sought to show this by the fact that during the Arbitration Procedings the written statement of the Petitioners was sought to be amended. For allowing such amendments and the consequent adjournments thereupon they were saddled with costs of Rs.1,00,000/- which they have paid. The amended written statement show those fabricated documents.

16. The fabricated documents had endorsements made on

the commissioning reports showing that they were not commissioned in the presence of the M.S.E.B Section-in-charge. This endorsement is made interpolated above the other signatures and endorsements. It is the case of the complainants that the endorsement constitutes fabricating false evidence since this endorsement was not made in the original documents at the time of the execution of the commissioning reports. It is their case that the original commissioning reports have not been produced which would require adverse inference to be drawn against the Petitioners under the provisions of Section 114(g) of the Indian Evidence Act, 1872.

17. They contend that the factum of tampering of the commissioning reports has been observed in the Arbitration Award. The fact that the witness on behalf of the M.S.E.B. (who led evidence on behalf of the Petitioners as the Officer of the M.S.E.B in the Arbitration Proceedings) could not explain in his cross examination who made the endorsement and when it was made. It has also been observed in the Arbitration Award. The practice of Officers of a Statutory Body to attempt to tamper with documents has been deprecated. The Complainants have relied upon and also produced before us the xerox copy of a sheet showing

various endorsements of the Officers of the M.S.E.B dated 4th March, 2002 in which it is marked "teach him a lesson". The Complainants contend that the instrument shows that the accused No.1 acting under the control and management of accused Nos.2,3,4 and 5 and accused no.6 who was responsible for the conduct of the M.S.E.B Officers in the specific Districts have created such false evidence. The Complaint against the Petitioners is under Section 192 and 199 r.w. Section 34 of the Cr.P.C for fabricating false evidence and making false statement in evidence.

18. A reading of the complaint seen alongside the xerox copies of the commissioning reports as well as the sheet showing the endorsements of the various Officers of the M.S.E.B with regard to Datar Switchgear Ltd., the party with whom they were contracting, shows a cognizable offence to have been made out. The complaint shows the joint action of the Petitioners for which they incurred vicarious liability in criminal jurisprudence as held in the case of Tarun K. Shah and Suresh supra.

19. It has been contended on behalf of the Petitioners that no Criminal Prosecution can lie against them since the sanction of the State Government required under Section

197 of the Criminal Procedure Code has not been obtained for prosecuting the Petitioners under the private complaint of the Respondents. The Petitioners claim to be Government Servants. They are Officers of the M.S.E.B. Our attention has been drawn to the provisions contained in Sections 5, 10, 15 and 81 of the Electricity (Supply) Act, 1948. The Petitioners contend that under Section 5 the members of State Electricity Board are constituted by the State Government under a "Notification" in the official gazette, and under Section 10 they, as the members of the Board, are liable for removal or suspension also by the State Government. The Petitioners have further contended that under Section 15 of the said Act the other Officers and employees of the Board are appointed by the Board and that the appointment of the Secretary of the Board is also subject to approval of the State Government. It is therefore, contended on their behalf that all the Petitioners as members, Officers and other employees of the Board are public servants under Section 81 of the said Act so that they would fall within purview of the Section 21 of the Indian Penal Code as public servants.

20. Consequently the Petitioners would fall under clauses XII of Section 21 of the Indian Penal Code. They therefore, claim

the right of being prosecuted only upon sanction of the State Government being granted for their prosecution.

21. However, it is brought to our notice that the Electricity (Supply) Act, 1948 has been repealed and substituted by the Electricity Act, 2003 under which the Petitioners are not public servants. The Petitioners, not being public servants when the complaints were filed in 2005, no sanction to prosecute them was required.

22. It is argued by Mr. Desai on behalf of the Petitioners that sanction would be required in Cr. Application No.3715/2005 since the cause of action for filing the complaint accrued in the year 2000 when the Electricity (Supply) Act, 1948 supra was in force. It is conceded by Mr. Desai that sanction would not be required in Cri. Application No.2854 of 2004 and 2855 of 2005 in which the cause of action accrued. On 16th September, 2003 when the demand for return of the amount allegedly wrongfully withheld and sought to be converted by adjustment to another account came to be made. This was well after the Electricity Act 2003 came into force on 10th June, 2003 which completely revamped the Electricity (Supply) Act, 1948 and under which admittedly the Petitioners in that Petition are not public servants.

23. The Sanction of the State Government insisted upon by the Petitioners before prosecution of the complaint in Criminal Application No.3715 of 2005 is under Section 197 of the Cr. P.C. The relevant part of the said Section runs thus :

> *" 197, Prosecution of Judges and public servants*
>
> *(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction -*
>
> *(a) in the case of a person who is employed, or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.*
>
> *(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, or the State Government."*

24. Under Section 197 of the Cr.P.C the prosecution of the Petitioners as public servants would require the following conditions to be fulfilled.

(i) that the Petitioners were acting in discharge of their official duties and

(ii) that they were employed in connection with the affairs of a State.

25. The twin requirement under the Section is the act of the Petitioners which should be in the discharge of their official duties and the employment of the Petitioners, which should be for the affairs of the State.

26. The prosecution of the Petitioners is for offences committed under Sections 405 and 409 of the I.P.C in Cr.Application No.2854 of 2004 and Criminal Application No.2855 of 2004 and under Section 192 and 199 of the I.P.C. In Criminal Application No.3715 of 2005. The offences relate to criminal breach of trust, and making false statement in evidence.

27. It will, therefore, have to be seen whether in the commission of the alleged offences the Petitioners acted in the discharge of their official duties. The earliest case on this point is of the case of the ***Dr. Hori Ram Singh Vs.***

Emperor, A.I.R. 1939, Federal Court, 43. The case was for offences inter alia under Section 409 and 477 (a) of the Indian Penal Code. The public servant in that case was embezzling property entrusted to him and thereby committing breach of trust and falsifying books of accounts. Considering the provisions of Section 197, the extent of protection that will be granted to a public servant was considered at page 51 of the Judgment thus :-

> ***"Extent of the protection – Obviously the Section does not mean that the very Act which is the gravamen of the charge and constitutes the offence should be the official duty of the servant of the Crown. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The words as used in the Section are not "in respect of any official duty" but "in respect of any act done or purporting to be done in the execution of his duty". The two expressions are obviously not identical. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in the execution of the duty. The reference is obviously to an offence committed in the course of an action, which is taken or purports to be taken in compliance with an official duty, and is in fact connected with it. The test appears to be not that the offence is capable of being committed only by a public servant and not by any one else, but that it is committed by a***

public servant in an act done or purporting to be done in the execution of his duty. The Section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public offence, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction. If the act complained of is an offence, it must necessarily be not an execution of duty, but a dereliction of it. What is necessary is that the offence must be in respect of an act done or purported to be done in execution of duty that is in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting.

The Section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the

time. For instance, if a public servant accepts as a reward a bribe in his office while actually engaged in some official work, he is not accepting it even in his official capacity, much less in the execution of any official duty, although it is quite certain that he could never have been able to take the bribe unless he were the official in charge of some official work."

28. Hence, it can be seen that the act of the public servant in respect of what he purportedly has to do by way of execution of his duty should be the one for which he is charged. If the offence is committed when he did the act in the execution of his duty and is connected with the execution of his, duty he cannot be prosecuted except with sanction of the Government that has appointed him and is entitled to remove him is obtained. This would include even acts done in access of his duty. But it should be inseparately connected with his duty. As against this, an act which constitutes the offence per se, would not be committed in execution of his duty but rather would be in dereliction of it. That act must not be the cloak of his official act. Any act done in his private capacity would, therefore, not be covered under Section 197 of the Cr.P.C even if it was done when he held his public office or even if he was engaged in official business at the time of that private act which amounts to an offence.

29. In the case of ***Vishnu Tatyaba Vs. Emperor, A.I.R. 1941 Bombay 85,*** the Government servant employed in the District Local Board had a duty to collect money on account of land revenue. Instead of sending it to the Government Treasury, he used it for his own purpose. He prepared a bill with an appendix containing a false measurement sheet. It was his duty to submit the bill. It was the duty of the sub-overseer and the chairman to sign and countersign the bill. He was, therefore, taken to be purportedly acting in performance of his official duty. Appreciating that as the preparation of the bill was an official act, the fraudulent submission was in discharge of his official duty, it was held that the act complained of was done and purported to be done in the exercise of his duty, and hence, the sanction for his prosecution was required under Section 197 of the Cr.P.C.

30. In the case of ***Lieutenant Hector Thomas Huntley Vs. Emperor, A.I.R. (31) 1944 Federal Court 66,*** it has again being held that the acts performed by the public servant for which he has been charged must be shown to be the official act for the protection to be afforded to him. Hence, it was held that the act of receiving illegal gratification by a public

servant cannot be regarded as an act done in execution of his duty. In this judgment the provision analogous to the provisions of 197 of Cr.P.C which was Section 270(1) of the Government of India of 1935 was under consideration.

31. In the case of ***H.H.B. Gill Vs. The King , A.I.R. 1948 Privy Council 128***, Section 270, Government of India Act, 1935 and Section 197 of the Cr.P.C came up for consideration. It was held that there was no difference between the two in the test to determine whether the act was done in the discharge of official duty. It was held in this case that the offence under Section 161 of the Code in which the Officer accepted bribe could never be part of the official duty. It was observed that :

> ***" A Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by***

virtue of the office that he held."

32. In the case of ***Albert West Meads Vs. The King, A.I.R. 1948 Privy Council 156*** it was held that acts of fraudulently misapplying money entrusted to the care of a public servant was not an act done by him by virtue of the office that he held since he could not justify the acts in respect of which he was charged. Consequently it was held that no sanction was required for his prosecution.

33. Following the dictum laid down in the case of **Hori Ram Singh** supra and **H.H.B. Gill** supra it has been held in the case of ***Amrik Singh Vs. State of Pepsu, AIR, 1955, SC 309*** which was a case of misappropriation of funds by a public servant, it was again held that it is not every act done by the public servant which would afford him protection under Section 197 of Cr.P.C. Such protection can be afforded only if the act which constituted the offence was directly concerned with his official duties, and was done by virtue of his office. The protection that would be accorded for the public servant under Section 197 of Cr.P.C is only for acts directly concerned with his official duties. It has been held that it would depend upon the facts of each case whether sanction would be required to prosecute the

Government servant for misappropriation. In that case the Government servant was required to obtain the signatures or thumb impressions of the employees before wages were paid to them. He did those acts as a part of his official duties. While doing those acts he misappropriated funds by obtaining false thumb impressions over papers which did not show employees being paid wages as required. It was held that there was no necessary connection between the acts for which the public officer was charged and the performance of his official duties. In this judgment the word "office" has been considered. It is held that if the offence could be justified by him as done by virtue of his office, sanction to prosecute him for such act done by him would be required. It was held in that case that whether a public servant being prosecuted for criminal misappropriation would require the protection of sanction would depend upon whether the acts complained of hinge on his duties as a public servant. If they are unconnected with such duties, then no sanction would be necessary. In that case a public servant received Rs.51/- alleged to have been misappropriated by him. It was his duty to pay that amount to the labourer and take his signature or thumb impression in acknowledgment thereof. The Officer paid the amount to the labourer which fact was mentioned in the acquittance roll. Even a thumb impression

of the labourer was taken against his name. Hence, it was held that, that act could be justified by him as done for his office and consequently sanction to prosecute him for such an act was required.

34. Following this, in the case of ***Matajog Dobey Vs. H.C. Bhari, (S) A.I.R. 1956 S.C.44*** it was held that the need for such sanction may not only be considered as soon as a complaint is lodged and on the allegations therein contained. The question may arise at any stage of proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty, but the acts subsequently coming to light in a police or judicial inquiry or based upon the cross examination of prosecution witnesses at the trial may establish the necessity for sanction. The need for sanction would have to be determined from stage to stage.

35. The entire concept of the official duty has been considered by the Apex Court in the case of **Aktar Alam Vs. State of Bihar, 1969 (1) SCC, 142**. After considering the case of **Gill** supra as well as **Hori Ram Singh** supra it has been held that receiving a bribe by an official under the Electricity (Supply) Act, 1948 is not an act committed while acting or

purporting to act in the discharge of official duty.

36. In these case the Petitioners have been charged with the offences inter alia of criminal breach of trust and fabrication of documents. Those are not acts in discharge of their official duties. Sanction to prosecute them for such acts would, therefore, not be required.

37. It is argued by Mr. Desai on behalf of the Petitioners that the Petitioners are public servants under Sections, 5,10,15 and 81 of the Electricity (Supply) Act, 1948. As public servants they are appointed and are removable by the State Government. The sanction of the State Government to prosecute them is therefore, required. He has relied upon judgments concerning in public servants in local bodies.

38. In the case of **Chimanbhai Kashibhai Patel Vs. Jashbhai Motibhai Desai, A.I.R. 1961, Gujarat 57** a single Judge of the Gujarat High Court has held that the Vice Chairman of the Works Committee of the Bombay Municipality under the Bombay Municipal Boroughs Act, 1955 is removable by the District Local Board and as such by a Local Government and consequently a public servant entitled to protection under Section 197 of the Cr.P.C. Mr.

Desai also drew our attention to the case of **Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal, A.I.R. 1967 S.C. 1857** in which the Electricity Board has been held to be a State under Article 12 of the Constitution of India. Writ Petition will, therefore, lie against the Officers of the Electricity Board. The services of the Officers would be transferable. However, merely being declared 'State' for the purposes of Article 12, the Officers would not ipso facto derive protection of Section 197 of the Cr.P.C as public servants. Mr. Desai relied upon another judgment in the case of **Maharashtra State Electricity Board, Engineer' s Association Vs. Mahatashtra State Electricity Board, A.I.R. 1968, Bombay 65** in which the Officers of the Board were shown to be public servants as contemplated under Section 81 and hence, having a statutory protection for the acts done in good faith so as to render them immune to legal proceedings.

39. In this Petition we are concerned with acts alleged to be done in bad faith – by fabricating records of the Board or breaching the Trust of the complainants. It will have to be seen, therefore, if as public servants their acts would bring them under the protection of Section 197 of the Cr.P.C.

40. Considering Section 21 of the Indian Penal Code in which the Officers of a statutory Corporation or a Government Company would be public servants under Clause XII, it has been held in the case of **Udayam Telugu Daily 7/1 Azamabad Industrial Area Vs. State of Andhra Pradesh, reported in 1986, Andhra Pradesh-26** that the Vice Chairman Andhra Pradesh State Road Transport Corporation (APSRTC) was a public servant.

41. Our attention has been drawn to the judgment of Apex Court in the case of **Mohammed Hadi Raja Vs. State of Bihar, A.I.R.1998 S.C. 1945**. Upon considering the purport and object of Section 197 of the Code as well as the extent of Section 21 of the Indian Penal Code it has been held that the action against the officers of Government Companies or Public undertakings cannot be held to be the action taken by or on behalf of the Government within the meaning of Section 197 of the Cr.P.C. Such a Corporation is held to be having independent entity distinct from the State and cannot be equated with the department run directly by the Government, despite the deep and pervasive control of the State and as such discharging the duties and functions of the State. After considering the case of **Praga Tools Corporation vs. C.A. Imanual, A.I.R. 1969 S.C. 1306**

in para 23 of that judgment, it has been observed that though Praga Tools was instrumentality or agency of the State, it has a separate legal existence and being a legal person cannot be held to be a Government concern. Similarly Sindhri Fertilizers which was a Government Company in which the President of India owned 100% of the equity, the company being a separate legal entity was held to have a separate legal existence. Similarly in para 23 of the judgment in the case of **Subodh Ranjan Ghosh Vs. Sindhri Fertilizers, A.I.R. 1957 Patna 10** further considering the decision in the **S.S. Dhanoa's case, A.I.R. 1981 S.C. 1395.** Hence even I.A.S. Officer on deputation was held not to be a Government Officer entitled to protection under Section 197 of the Cr.P.C. Even though he did not cease to be a Government servant and had a lien on Government service while on deputation.

42. Consequently it was held in para 24 of the judgment in the case of **Mohammed Raja** supra that the language of the Section 197 of the Cr.P.C did not grant protection to officers of a public undertaking, it being a separate legal person with distinct legal entity. Such instrumentality stood on a different footing than Government departments. It was observed that legislature did not think it necessary to expressly include the Officers of Government Companies for

affording them protection under 197 of the Cr.P.C. Hence, they had no such protection even though they were a State within the meaning of Article 12 of the Constitution of India on account of *"deep and pervasive control of the Government"*.

43. This judgment to our mind completely determines the dispute between the parties about the question of sanction. The Respondents did not require to prosecute their private complaint after obtaining sanction from the State Government in respect of the prosecution of the Petitioners for the acts outside their official duty being the alleged fabrication of records of the M.S.E.B though they may be public servants as contemplated in Section 81 of the Electricity (Supply) Act, 1948.

44. Hence all the complaints can be prosecuted without sanction of the State Government.

45. A cognizable case is disclosed in each of them. There is no merit in any of these Petitions/Applications. All the Petitions/Applications are dismissed.

46. As the criminal complaints have been filed since 2004,

we expect the concerned Learned Magistrate to dispose them off expeditiously, preferably within 6 months after the matter is ready for hearing.

(SMT. ROSHAN DALVI, J.) **(DR. S. RADHAKRISHNAN, J.)**